

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

LAVAR SUMMERS,)
Petitioner,)
v.) Case No.: 1:13-cv-00640-JHH-SGC
JOHN T. RATHMAN, Warden,)
Respondent.)

MEMORANDUM OPINION

On August 9, 2016, the magistrate judge entered a report (doc. 10), recommending the petition (doc. 1) be dismissed with prejudice for lack of subject matter jurisdiction. The court notified petitioner Lavar Summers that he had fourteen days to respond with any objections. (Doc. 10 at 5). On August 15, 2015, the U.S. Postal Service returned to the court Petitioner's copy of the report and recommendation marked as undeliverable. (Doc. 11). On August 24, 2016, the magistrate judge entered an Order noting that the Bureau of Prisons released petitioner to a halfway house and directing the Clerk to send a copy of the report and recommendation to him at his new address. (Doc. 12). The Clerk mailed a copy of the report and recommendation to Petitioner at the new address that same date, and petitioner has filed no objections.

After careful consideration of the record in this case and the magistrate judge's report, the court hereby **ADOPTS** the report of the magistrate judge and **ACCEPTS** her recommendations. In accordance with the recommendation, the court finds that the petition (doc. 1) is due to be dismissed with prejudice for lack of subject matter jurisdiction. The court further finds that petitioner's request to transfer this action to the sentencing court is due to be denied.

Additionally, in accordance with Rule 11 of the *Rules Governing 2255 Proceedings*, the court also finds that the circumstances of this case do not warrant granting a certificate of appealability, which the court may issue "only if the applicant has made a substantial showing of the denial of a

constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing, a “petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that “the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotation omitted). Because this court lacks jurisdiction to hear what are plainly § 2255 claims, a certificate of appealability is not warranted due to be denied.

The court will enter a separate Final Order.

DONE and ORDERED this 27th day of September, 2016.



KARON OWEN BOWDRE
CHIEF UNITED STATES DISTRICT JUDGE